

AMENDED IN SENATE AUGUST 17, 2004

AMENDED IN SENATE AUGUST 9, 2004

AMENDED IN ASSEMBLY MAY 3, 2004

AMENDED IN ASSEMBLY APRIL 16, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1946

Introduced by Assembly Member Steinberg
(Coauthor: Senator Romero)

February 11, 2004

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1946, as amended, Steinberg. Sentencing.

Under existing law, a state prisoner who is diagnosed with a disease that would produce death within 6 months and whose release is deemed not to threaten the public safety may have his or her sentence recalled and be resentenced. Existing law additionally sets forth grounds under which the court has discretion to find that a prisoner is eligible for resentence or recall.

This bill would make prisoners who are diagnosed with a disease that would produce death within 6 months, and whose release is deemed not to threaten public safety, eligible to have their sentences recalled and to be resentenced and would expand the grounds under which the court exercises discretion to find eligibility for resentencing or recall. This bill would also oblige a physician employed by the Department of

Corrections who determines that a prisoner meets one of specified criteria for eligibility for this recall and resentencing to inform the appropriate chief medical officer of that fact, and, if he or she concurs, would oblige the chief medical officer to inform the warden of that fact. This bill would also require the warden or the warden's representative to inform a prisoner given that prognosis of the recall and resentencing procedures, and to arrange for the prisoner's designee to be informed of the prisoner's medical condition and prognosis, and of the procedures for recall and resentencing. This bill would require the warden or the warden's representative to contact a mentally unfit inmate's emergency contact and provide the contact with this information. This bill would also direct the warden or the warden's representative to keep the prisoner and the prisoner's designee apprised of the prisoner's medical condition and recall and resentencing proceedings. This bill would also provide that when a prisoner or his or her designee initiates recall and resentencing procedures, the chief medical officer and the warden or the warden's representative, if they find that the prisoner meets one of specified criteria for eligibility for recall and resentencing, shall, within 48 hours of their finding, inform the prisoner or his or her designee of the recall and resentencing procedures. This bill would also require release of a prisoner who is resentenced within 48 hours of receipt of the court's order, unless the prisoner agrees to a longer time period, and would require that the prisoner be given his or her medical records, state identification, medications, and property at the time of release. Finally, this bill would require the Director of Corrections to issue a directive to Department of Corrections staff explaining recall and resentencing procedures.

This bill would incorporate additional changes in Section 1170 of the Penal Code, proposed by AB 854 and AB 1941, to become effective only if this bill and one or more of the other bills are enacted and become effective on or before January 1, 2005, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1170 of the Penal Code is amended to
- 2 read:
- 3 1170. (a) (1) The Legislature finds and declares that the
- 4 purpose of imprisonment for crime is punishment. This purpose is



1 best served by terms proportionate to the seriousness of the offense
2 with provision for uniformity in the sentences of offenders
3 committing the same offense under similar circumstances. The
4 Legislature further finds and declares that the elimination of
5 disparity and the provision of uniformity of sentences can best be
6 achieved by determinate sentences fixed by statute in proportion
7 to the seriousness of the offense as determined by the Legislature
8 to be imposed by the court with specified discretion.

9 (2) Paragraph (1) shall not be construed to preclude programs,
10 including educational programs, that are designed to rehabilitate
11 nonviolent, first-time felony offenders. The Legislature
12 encourages the development of policies and programs designed to
13 educate and rehabilitate nonviolent, first-time felony offenders
14 consistent with the purpose of imprisonment.

15 (3) In any case in which the punishment prescribed by statute
16 for a person convicted of a public offense is a term of
17 imprisonment in the state prison of any specification of three time
18 periods, the court shall sentence the defendant to one of the terms
19 of imprisonment specified unless the convicted person is given any
20 other disposition provided by law, including a fine, jail, probation,
21 or the suspension of imposition or execution of sentence or is
22 sentenced pursuant to subdivision (b) of Section 1168 because he
23 or she had committed his or her crime prior to July 1, 1977. In
24 sentencing the convicted person, the court shall apply the
25 sentencing rules of the Judicial Council. The court, unless it
26 determines that there are circumstances in mitigation of the
27 punishment prescribed, shall also impose any other term that it is
28 required by law to impose as an additional term. Nothing in this
29 article shall affect any provision of law that imposes the death
30 penalty, that authorizes or restricts the granting of probation or
31 suspending the execution or imposition of sentence, or expressly
32 provides for imprisonment in the state prison for life. In any case
33 in which the amount of preimprisonment credit under Section
34 2900.5 or any other provision of law is equal to or exceeds any
35 sentence imposed pursuant to this chapter, the entire sentence shall
36 be deemed to have been served and the defendant shall not be
37 actually delivered to the custody of the Director of Corrections.
38 The court shall advise the defendant that he or she shall serve a
39 period of parole and order the defendant to report to the parole
40 office closest to the defendant's last legal residence, unless the

1 in-custody credits equal the total sentence, including both
2 confinement time and the period of parole. The sentence shall be
3 deemed a separate prior prison term under Section 667.5, and a
4 copy of the judgment and other necessary documentation shall be
5 forwarded to the Director of Corrections.

6 (b) When a judgment of imprisonment is to be imposed and the
7 statute specifies three possible terms, the court shall order
8 imposition of the middle term, unless there are circumstances in
9 aggravation or mitigation of the crime. At least four days prior to
10 the time set for imposition of judgment, either party or the victim,
11 or the family of the victim if the victim is deceased, may submit
12 a statement in aggravation or mitigation to dispute facts in the
13 record or the probation officer's report, or to present additional
14 facts. In determining whether there are circumstances that justify
15 imposition of the upper or lower term, the court may consider the
16 record in the case, the probation officer's report, other reports
17 including reports received pursuant to Section 1203.03 and
18 statements in aggravation or mitigation submitted by the
19 prosecution, the defendant, or the victim, or the family of the
20 victim if the victim is deceased, and any further evidence
21 introduced at the sentencing hearing. The court shall set forth on
22 the record the facts and reasons for imposing the upper or lower
23 term. The court may not impose an upper term by using the fact
24 of any enhancement upon which sentence is imposed under any
25 provision of law. A term of imprisonment shall not be specified if
26 imposition of sentence is suspended.

27 (c) The court shall state the reasons for its sentence choice on
28 the record at the time of sentencing. The court shall also inform the
29 defendant that as part of the sentence after expiration of the term
30 he or she may be on parole for a period as provided in Section
31 3000.

32 (d) When a defendant subject to this section or subdivision (b)
33 of Section 1168 has been sentenced to be imprisoned in the state
34 prison and has been committed to the custody of the Director of
35 Corrections, the court may, within 120 days of the date of
36 commitment on its own motion, or at any time upon the
37 recommendation of the Director of Corrections or the Board of
38 Prison Terms, recall the sentence and commitment previously
39 ordered and resentence the defendant in the same manner as if he
40 or she had not previously been sentenced, provided the new

1 sentence, if any, is no greater than the initial sentence. The
2 resentence under this subdivision shall apply the sentencing rules
3 of the Judicial Council so as to eliminate disparity of sentences and
4 to promote uniformity of sentencing. Credit shall be given for time
5 served.

6 (e) (1) Notwithstanding any other law and consistent with
7 paragraph (1) of subdivision (a) of Section 1170, if the Director of
8 Corrections or the Board of Prison Terms or both determine that
9 a prisoner satisfies the criteria set forth in paragraph (2), the
10 director or the board may recommend to the court that the
11 prisoner's sentence be recalled.

12 (2) The court shall have the discretion to resentence or recall if
13 the court finds that the facts described in subparagraphs (A) and
14 (B) or subparagraphs (B) and (C) exist:

15 (A) The prisoner is terminally ill with an incurable condition
16 caused by an illness or disease that would produce death within 6
17 months, as determined by a physician employed by the
18 department.

19 (B) The conditions under which the prisoner would be released
20 or receive treatment do not pose a threat to public safety.

21 (C) The prisoner is medically incapacitated by a medical
22 condition that renders him or her permanently unable to move
23 without assistance, permanently unable to perform activities of
24 daily living such as dressing, eating, ambulating, or maintaining
25 personal hygiene without assistance, or permanently
26 ventilator-dependent.

27 The Board of Prison Terms shall make findings pursuant to this
28 subdivision before making a recommendation for resentence or
29 recall to the court. This subdivision does not apply to a prisoner
30 sentenced to death or a term of life without the possibility of
31 parole.

32 (3) Within 10 days of receipt of a positive recommendation by
33 the director or the board, the court shall hold a hearing to consider
34 whether the prisoner's sentence should be recalled.

35 (4) Any physician employed by the department who
36 determines that a prisoner meets the criteria of subparagraph (A)
37 or (C) of paragraph (2) shall notify the chief medical officer of the
38 prognosis. If the chief medical officer concurs with the prognosis,
39 he or she shall notify the warden. Within 48 hours of receiving
40 notification, the warden or the warden's representative shall notify

1 the prisoner of the recall and resentencing procedures, and shall
2 arrange for the prisoner to designate a family member or other
3 outside agent to be notified as to the prisoner's medical condition
4 and prognosis, and as to the recall and resentencing procedures. If
5 the inmate is deemed mentally unfit, the warden or the warden's
6 representative shall contact the inmate's emergency contact and
7 provide the information described in paragraph (2).

8 (5) The warden or the warden's representative shall provide the
9 prisoner and his or her family member, agent, or emergency
10 contact, as described in paragraph (4), updated information
11 throughout the recall and resentencing process with regard to the
12 prisoner's medical condition and the status of the prisoner's recall
13 and resentencing proceedings.

14 (6) Notwithstanding any other provisions of this section, the
15 prisoner or his or her family member or designee may
16 independently request consideration for recall and resentencing by
17 contacting the chief medical officer at the prison or the Director of
18 Corrections. Upon receipt of the request, the chief medical officer
19 and the warden or the warden's representative shall follow the
20 procedures described in paragraph (4). If the director determines
21 that the prisoner satisfies the criteria set forth in paragraph (2), the
22 director or board may recommend to the court that the prisoner's
23 sentence be recalled. The director shall submit a recommendation
24 for release within 30 days in the case of inmates sentenced to
25 determinate terms and, in the case of inmates sentenced to
26 indeterminate terms, the director shall make a recommendation to
27 the Board of Prison Terms with respect to the inmates who have
28 applied under this section. The board shall consider this
29 information and make an independent judgment pursuant to
30 paragraph (2) and make findings related thereto before rejecting
31 the request or making a recommendation to the court. This action
32 shall be taken at the next lawfully noticed board meeting.

33 (7) Any recommendation for recall submitted to the court by
34 the Director of Corrections or the Board of Prison Terms shall
35 include one or more medical evaluations, a postrelease plan, and
36 findings pursuant to paragraph (2).

37 (8) If possible, the matter shall be heard before the same judge
38 of the court who sentenced the prisoner.

39 (9) If the court grants the recall and resentencing application,
40 the prisoner shall be released by the department within 48 hours

of receipt of the court's order, unless a longer time period is agreed to by the inmate. At the time of release, the warden or the warden's representative shall ensure that the prisoner has each of the following in his or her possession: a discharge medical summary, full medical records, state identification, parole medications, and all property belonging to the prisoner. After discharge, any additional records shall be sent to the prisoner's forwarding address.

(10) The director shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who meets the criteria of subparagraph (A) or (C) of paragraph (2) is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 2. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. In implementing this section, the Department of Corrections ~~shall~~ *is encouraged to* give

1 priority enrollment in programs to promote successful return to the
2 community to an inmate with a short remaining term of
3 commitment and a release date that would allow him or her
4 adequate time to complete the program.

5 (3) In any case in which the punishment prescribed by statute
6 for a person convicted of a public offense is a term of
7 imprisonment in the state prison of any specification of three time
8 periods, the court shall sentence the defendant to one of the terms
9 of imprisonment specified unless the convicted person is given any
10 other disposition provided by law, including a fine, jail, probation,
11 or the suspension of imposition or execution of sentence or is
12 sentenced pursuant to subdivision (b) of Section 1168 because he
13 or she had committed his or her crime prior to July 1, 1977. In
14 sentencing the convicted person, the court shall apply the
15 sentencing rules of the Judicial Council. The court, unless it
16 determines that there are circumstances in mitigation of the
17 punishment prescribed, shall also impose any other term that it is
18 required by law to impose as an additional term. Nothing in this
19 article shall affect any provision of law that imposes the death
20 penalty, that authorizes or restricts the granting of probation or
21 suspending the execution or imposition of sentence, or expressly
22 provides for imprisonment in the state prison for life. In any case
23 in which the amount of preimprisonment credit under Section
24 2900.5 or any other provision of law is equal to or exceeds any
25 sentence imposed pursuant to this chapter, the entire sentence shall
26 be deemed to have been served and the defendant shall not be
27 actually delivered to the custody of the Director of Corrections.
28 The court shall advise the defendant that he or she shall serve a
29 period of parole and order the defendant to report to the parole
30 office closest to the defendant's last legal residence, unless the
31 in-custody credits equal the total sentence, including both
32 confinement time and the period of parole. The sentence shall be
33 deemed a separate prior prison term under Section 667.5, and a
34 copy of the judgment and other necessary documentation shall be
35 forwarded to the Director of Corrections.

36 (b) When a judgment of imprisonment is to be imposed and the
37 statute specifies three possible terms, the court shall order
38 imposition of the middle term, unless there are circumstances in
39 aggravation or mitigation of the crime. At least four days prior to
40 the time set for imposition of judgment, either party or the victim,

1 or the family of the victim if the victim is deceased, may submit
2 a statement in aggravation or mitigation to dispute facts in the
3 record or the probation officer's report, or to present additional
4 facts. In determining whether there are circumstances that justify
5 imposition of the upper or lower term, the court may consider the
6 record in the case, the probation officer's report, other reports
7 including reports received pursuant to Section 1203.03 and
8 statements in aggravation or mitigation submitted by the
9 prosecution, the defendant, or the victim, or the family of the
10 victim if the victim is deceased, and any further evidence
11 introduced at the sentencing hearing. The court shall set forth on
12 the record the facts and reasons for imposing the upper or lower
13 term. The court may not impose an upper term by using the fact
14 of any enhancement upon which sentence is imposed under any
15 provision of law. A term of imprisonment shall not be specified if
16 imposition of sentence is suspended.

17 (c) The court shall state the reasons for its sentence choice on
18 the record at the time of sentencing. The court shall also inform the
19 defendant that as part of the sentence after expiration of the term
20 he or she may be on parole for a period as provided in Section
21 3000.

22 (d) When a defendant subject to this section or subdivision (b)
23 of Section 1168 has been sentenced to be imprisoned in the state
24 prison and has been committed to the custody of the Director of
25 Corrections, the court may, within 120 days of the date of
26 commitment on its own motion, or at any time upon the
27 recommendation of the Director of Corrections or the Board of
28 Prison Terms, recall the sentence and commitment previously
29 ordered and resentence the defendant in the same manner as if he
30 or she had not previously been sentenced, provided the new
31 sentence, if any, is no greater than the initial sentence. The
32 resentence under this subdivision shall apply the sentencing rules
33 of the Judicial Council so as to eliminate disparity of sentences and
34 to promote uniformity of sentencing. Credit shall be given for time
35 served.

36 (e) (1) Notwithstanding any other law and consistent with
37 paragraph (1) of subdivision (a) of Section 1170, if the Director of
38 Corrections or the Board of Prison Terms or both determine that
39 a prisoner satisfies the criteria set forth in paragraph (2), the



1 director or the board may recommend to the court that the
2 prisoner's sentence be recalled.

3 (2) The court shall have the discretion to resentence or recall if
4 the court finds that the facts described in subparagraphs (A) and
5 (B) or subparagraphs (B) and (C) exist:

6 (A) The prisoner is terminally ill with an incurable condition
7 caused by an illness or disease that would produce death within six
8 months, as determined by a physician employed by the
9 department.

10 (B) The conditions under which the prisoner would be released
11 or receive treatment do not pose a threat to public safety.

12 (C) The prisoner is medically incapacitated by a medical
13 condition that renders him or her permanently unable to move
14 without assistance, permanently unable to perform activities of
15 daily living such as dressing, eating, ambulating, or maintaining
16 personal hygiene without assistance, or permanently
17 ventilator-dependent.

18 The Board of Prison Terms shall make findings pursuant to this
19 subdivision before making a recommendation for resentence or
20 recall to the court. This subdivision does not apply to a prisoner
21 sentenced to death or a term of life without the possibility of
22 parole.

23 (3) Within 10 days of receipt of a positive recommendation by
24 the director or the board, the court shall hold a hearing to consider
25 whether the prisoner's sentence should be recalled.

26 (4) Any physician employed by the department who
27 determines that a prisoner meets the criteria of subparagraph (A)
28 or (C) of paragraph (2) shall notify the chief medical officer of the
29 prognosis. If the chief medical officer concurs with the prognosis,
30 he or she shall notify the warden. Within 48 hours of receiving
31 notification, the warden or the warden's representative shall notify
32 the prisoner of the recall and resentencing procedures, and shall
33 arrange for the prisoner to designate a family member or other
34 outside agent to be notified as to the prisoner's medical condition
35 and prognosis, and as to the recall and resentencing procedures. If
36 the inmate is deemed mentally unfit, the warden or the warden's
37 representative shall contact the inmate's emergency contact and
38 provide the information described in paragraph (2).

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

5 (6) Notwithstanding any other provisions of this section, the
6 prisoner or his or her family member or designee may
7 independently request consideration for recall and resentencing by
8 contacting the chief medical officer at the prison or the Director of
9 Corrections. Upon receipt of the request, the chief medical officer
10 and the warden or the warden's representative shall follow the
11 procedure described in paragraph (4). If the director determines
12 that the prisoner satisfies the criteria set forth in paragraph (2), the
13 director or board may recommend to the court that the prisoner's
14 sentence be recalled. The director shall submit a recommendation
15 for release within 30 days in the case of inmates sentenced to
16 determinate terms and, in the case of inmates sentenced to
17 indeterminate terms, the director shall make a recommendation to
18 the Board of Prison Terms with respect to the inmates who have
19 applied under this section. The board shall consider this
20 information and make an independent judgment pursuant to
21 paragraph (2) and make findings related thereto before rejecting
22 the request or making a recommendation to the court. This action
23 shall be taken at the next lawfully noticed board meeting.

24 (7) Any recommendation for recall submitted to the court by
25 the Director of Corrections or the Board of Prison Terms shall
26 include one or more medical evaluations, a postrelease plan, and
27 findings pursuant to paragraph (2).

28 (8) If possible, the matter shall be heard before the same judge
29 of the court who sentenced the prisoner.

30 (9) If the court grants the recall and resentencing application,
31 the prisoner shall be released by the department within 48 hours
32 of receipt of the court's order, unless a longer time period is agreed
33 to by the inmate. At the time of release, the warden or the warden's
34 representative shall ensure that the prisoner has each of the
35 following in his or her possession: a discharge medical summary,
36 full medical records, state identification, parole medications, and
37 all property belonging to the prisoner. After discharge, any
38 additional records shall be sent to the prisoner's forwarding
39 address.

(10) The director shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who meets the criteria of subparagraph (A) or (C) of paragraph (2) is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

(f) Any sentence imposed under this article shall be subject to the provisions of Sections 3000 and 3057 and any other applicable provisions of law.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

SEC. 3. Section 1170 of the Penal Code is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of imprisonment for crime is punishment. This purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. The Legislature further finds and declares that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense as determined by the Legislature to be imposed by the court with specified discretion.

(2) Paragraph (1) shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders. The Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent, first-time felony offenders, particularly those who are sole custodial parents of minor dependent children, consistent with the purpose of imprisonment.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In

1 sentencing the convicted person, the court shall apply the
2 sentencing rules of the Judicial Council. The court, unless it
3 determines that there are circumstances in mitigation of the
4 punishment prescribed, shall also impose any other term that it is
5 required by law to impose as an additional term. Nothing in this
6 article shall affect any provision of law that imposes the death
7 penalty, that authorizes or restricts the granting of probation or
8 suspending the execution or imposition of sentence, or expressly
9 provides for imprisonment in the state prison for life. In any case
10 in which the amount of preimprisonment credit under Section
11 2900.5 or any other provision of law is equal to or exceeds any
12 sentence imposed pursuant to this chapter, the entire sentence shall
13 be deemed to have been served and the defendant shall not be
14 actually delivered to the custody of the Director of Corrections.
15 The court shall advise the defendant that he or she shall serve a
16 period of parole and order the defendant to report to the parole
17 office closest to the defendant's last legal residence, unless the
18 in-custody credits equal the total sentence, including both
19 confinement time and the period of parole. The sentence shall be
20 deemed a separate prior prison term under Section 667.5, and a
21 copy of the judgment and other necessary documentation shall be
22 forwarded to the Director of Corrections.

23 (b) When a judgment of imprisonment is to be imposed and the
24 statute specifies three possible terms, the court shall order
25 imposition of the middle term, unless there are circumstances in
26 aggravation or mitigation of the crime. At least four days prior to
27 the time set for imposition of judgment, either party or the victim,
28 or the family of the victim if the victim is deceased, may submit
29 a statement in aggravation or mitigation to dispute facts in the
30 record or the probation officer's report, or to present additional
31 facts. In determining whether there are circumstances that justify
32 imposition of the upper or lower term, the court may consider the
33 record in the case, the probation officer's report, other reports
34 including reports received pursuant to Section 1203.03 and
35 statements in aggravation or mitigation submitted by the
36 prosecution, the defendant, or the victim, or the family of the
37 victim if the victim is deceased, and any further evidence
38 introduced at the sentencing hearing. The court shall set forth on
39 the record the facts and reasons for imposing the upper or lower
40 term. The court may not impose an upper term by using the fact



1 of any enhancement upon which sentence is imposed under any
2 provision of law. A term of imprisonment shall not be specified if
3 imposition of sentence is suspended.

4 (c) The court shall state the reasons for its sentence choice on
5 the record at the time of sentencing. The court shall also inform the
6 defendant that as part of the sentence after expiration of the term
7 he or she may be on parole for a period as provided in Section
8 3000.

9 (d) When a defendant subject to this section or subdivision (b)
10 of Section 1168 has been sentenced to be imprisoned in the state
11 prison and has been committed to the custody of the Director of
12 Corrections, the court may, within 120 days of the date of
13 commitment on its own motion, or at any time upon the
14 recommendation of the Director of Corrections or the Board of
15 Prison Terms, recall the sentence and commitment previously
16 ordered and resentence the defendant in the same manner as if he
17 or she had not previously been sentenced, provided the new
18 sentence, if any, is no greater than the initial sentence. The
19 resentence under this subdivision shall apply the sentencing rules
20 of the Judicial Council so as to eliminate disparity of sentences and
21 to promote uniformity of sentencing. Credit shall be given for time
22 served.

23 (e) (1) Notwithstanding any other law and consistent with
24 paragraph (1) of subdivision (a) of Section 1170, if the Director of
25 Corrections or the Board of Prison Terms or both determine that
26 a prisoner satisfies the criteria set forth in paragraph (2), the
27 director or the board may recommend to the court that the
28 prisoner's sentence be recalled.

29 (2) The court shall have the discretion to resentence or recall if
30 the court finds that the facts described in subparagraphs (A) and
31 (B) or subparagraphs (B) and (C) exist:

32 (A) The prisoner is terminally ill with an incurable condition
33 caused by an illness or disease that would produce death within six
34 months, as determined by a physician employed by the
35 department.

36 (B) The conditions under which the prisoner would be released
37 or receive treatment do not pose a threat to public safety.

38 (C) The prisoner is medically incapacitated by a medical
39 condition that renders him or her permanently unable to move
40 without assistance, permanently unable to perform activities of



1 daily living such as dressing, eating, ambulating, or maintaining
2 personal hygiene without assistance, or permanently
3 ventilator-dependent.

4 The Board of Prison Terms shall make findings pursuant to this
5 subdivision before making a recommendation for resentence or
6 recall to the court. This subdivision does not apply to a prisoner
7 sentenced to death or a term of life without the possibility of
8 parole.

9 (3) Within 10 days of receipt of a positive recommendation by
10 the director or the board, the court shall hold a hearing to consider
11 whether the prisoner's sentence should be recalled.

12 (4) Any physician employed by the department who
13 determines that a prisoner meets the criteria of subparagraph (A)
14 or (C) of paragraph (2) shall notify the chief medical officer of the
15 prognosis. If the chief medical officer concurs with the prognosis,
16 he or she shall notify the warden. Within 48 hours of receiving
17 notification, the warden or the warden's representative shall notify
18 the prisoner of the recall and resentencing procedures, and shall
19 arrange for the prisoner to designate a family member or other
20 outside agent to be notified as to the prisoner's medical condition
21 and prognosis, and as to the recall and resentencing procedures. If
22 the inmate is deemed mentally unfit, the warden or the warden's
23 representative shall contact the inmate's emergency contact and
24 provide the information described in paragraph (2).

25 (5) The warden or the warden's representative shall provide the
26 prisoner and his or her family member, agent, or emergency
27 contact, as described in paragraph (4), updated information
28 throughout the recall and resentencing process with regard to the
29 prisoner's medical condition and the status of the prisoner's recall
30 and resentencing proceedings.

31 (6) Notwithstanding any other provisions of this section, the
32 prisoner or his or her family member or designee may
33 independently request consideration for recall and resentencing by
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35 Corrections. Upon receipt of the request, the chief medical officer
36 and the warden or the warden's representative shall follow the
37 procedure described in paragraph (4). If the director determines
38 that the prisoner satisfies the criteria set forth in paragraph (2), the
39 director or board may recommend to the court that the prisoner's
40 sentence be recalled. The director shall submit a recommendation

1 for release within 30 days in the case of inmates sentenced to
2 determinate terms and, in the case of inmates sentenced to
3 indeterminate terms, the director shall make a recommendation to
4 the Board of Prison Terms with respect to the inmates who have
5 applied under this section. The board shall consider this
6 information and make an independent judgment pursuant to
7 paragraph (2) and make findings related thereto before rejecting
8 the request or making a recommendation to the court. This action
9 shall be taken at the next lawfully noticed board meeting.

10 (7) Any recommendation for recall submitted to the court by
11 the Director of Corrections or the Board of Prison Terms shall
12 include one or more medical evaluations, a postrelease plan, and
13 findings pursuant to paragraph (2).

14 (8) If possible, the matter shall be heard before the same judge
15 of the court who sentenced the prisoner.

16 (9) If the court grants the recall and resentencing application,
17 the prisoner shall be released by the department within 48 hours
18 of receipt of the court's order, unless a longer time period is agreed
19 to by the inmate. At the time of release, the warden or the warden's
20 representative shall ensure that the prisoner has each of the
21 following in his or her possession: a discharge medical summary,
22 full medical records, state identification, parole medications, and
23 all property belonging to the prisoner. After discharge, any
24 additional records shall be sent to the prisoner's forwarding
25 address.

26 (10) The director shall issue a directive to medical and
27 correctional staff employed by the department that details the
28 guidelines and procedures for initiating a recall and resentencing
29 procedure. The directive shall clearly state that any prisoner who
30 meets the criteria of subparagraph (A) or (C) of paragraph (2) is
31 eligible for recall and resentencing consideration, and that recall
32 and resentencing procedures shall be initiated upon that prognosis.

33 (f) Any sentence imposed under this article shall be subject to
34 the provisions of Sections 3000 and 3057 and any other applicable
35 provisions of law.

36 (g) A sentence to state prison for a determinate term for which
37 only one term is specified, is a sentence to state prison under this
38 section.

39 SEC. 4. Section 1170 of the Penal Code is amended to read:

1 1170. (a) (1) The Legislature finds and declares that the
2 purpose of imprisonment for crime is punishment. This purpose is
3 best served by terms proportionate to the seriousness of the offense
4 with provision for uniformity in the sentences of offenders
5 committing the same offense under similar circumstances. The
6 Legislature further finds and declares that the elimination of
7 disparity and the provision of uniformity of sentences can best be
8 achieved by determinate sentences fixed by statute in proportion
9 to the seriousness of the offense as determined by the Legislature
10 to be imposed by the court with specified discretion.

11 (2) Notwithstanding paragraph (1), the Legislature further
12 finds and declares that programs should be available for inmates,
13 including, but not limited to, educational programs, that are
14 designed to prepare nonviolent felony offenders for successful
15 reentry into the community. The Legislature encourages the
16 development of policies and programs designed to educate and
17 rehabilitate nonviolent felony offenders, particularly those who
18 are sole custodial parents of minor dependent children. In
19 implementing this section, the Department of Corrections ~~shall~~ is
20 *encouraged to* give priority enrollment in programs to promote
21 successful return to the community to an inmate with a short
22 remaining term of commitment and a release date that would allow
23 him or her adequate time to complete the program.

24 (3) In any case in which the punishment prescribed by statute
25 for a person convicted of a public offense is a term of
26 imprisonment in the state prison of any specification of three time
27 periods, the court shall sentence the defendant to one of the terms
28 of imprisonment specified unless the convicted person is given any
29 other disposition provided by law, including a fine, jail, probation,
30 or the suspension of imposition or execution of sentence or is
31 sentenced pursuant to subdivision (b) of Section 1168 because he
32 or she had committed his or her crime prior to July 1, 1977. In
33 sentencing the convicted person, the court shall apply the
34 sentencing rules of the Judicial Council. The court, unless it
35 determines that there are circumstances in mitigation of the
36 punishment prescribed, shall also impose any other term that it is
37 required by law to impose as an additional term. Nothing in this
38 article shall affect any provision of law that imposes the death
39 penalty, that authorizes or restricts the granting of probation or
40 suspending the execution or imposition of sentence, or expressly

1 provides for imprisonment in the state prison for life. In any case
2 in which the amount of preimprisonment credit under Section
3 2900.5 or any other provision of law is equal to or exceeds any
4 sentence imposed pursuant to this chapter, the entire sentence shall
5 be deemed to have been served and the defendant shall not be
6 actually delivered to the custody of the Director of Corrections.
7 The court shall advise the defendant that he or she shall serve a
8 period of parole and order the defendant to report to the parole
9 office closest to the defendant's last legal residence, unless the
10 in-custody credits equal the total sentence, including both
11 confinement time and the period of parole. The sentence shall be
12 deemed a separate prior prison term under Section 667.5, and a
13 copy of the judgment and other necessary documentation shall be
14 forwarded to the Director of Corrections.

15 (b) When a judgment of imprisonment is to be imposed and the
16 statute specifies three possible terms, the court shall order
17 imposition of the middle term, unless there are circumstances in
18 aggravation or mitigation of the crime. At least four days prior to
19 the time set for imposition of judgment, either party or the victim,
20 or the family of the victim if the victim is deceased, may submit
21 a statement in aggravation or mitigation to dispute facts in the
22 record or the probation officer's report, or to present additional
23 facts. In determining whether there are circumstances that justify
24 imposition of the upper or lower term, the court may consider the
25 record in the case, the probation officer's report, other reports
26 including reports received pursuant to Section 1203.03 and
27 statements in aggravation or mitigation submitted by the
28 prosecution, the defendant, or the victim, or the family of the
29 victim if the victim is deceased, and any further evidence
30 introduced at the sentencing hearing. The court shall set forth on
31 the record the facts and reasons for imposing the upper or lower
32 term. The court may not impose an upper term by using the fact
33 of any enhancement upon which sentence is imposed under any
34 provision of law. A term of imprisonment shall not be specified if
35 imposition of sentence is suspended.

36 (c) The court shall state the reasons for its sentence choice on
37 the record at the time of sentencing. The court shall also inform the
38 defendant that as part of the sentence after expiration of the term
39 he or she may be on parole for a period as provided in Section
40 3000.



(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the Director of Corrections, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the Director of Corrections or the Board of Prison Terms, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds that the facts described in subparagraphs (A) and (B) or subparagraphs (B) and (C) exist:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

(C) The prisoner is medically incapacitated by a medical condition that renders him or her permanently unable to move without assistance, permanently unable to perform activities of daily living such as dressing, eating, ambulating, or maintaining personal hygiene without assistance, or permanently ventilator-dependent.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by
2 the director or the board, the court shall hold a hearing to consider
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who
5 determines that a prisoner meets the criteria of subparagraph (A)
6 or (C) of paragraph (2) shall notify the chief medical officer of the
7 prognosis. If the chief medical officer concurs with the prognosis,
8 he or she shall notify the warden. Within 48 hours of receiving
9 notification, the warden or the warden's representative shall notify
10 the prisoner of the recall and resentencing procedures, and shall
11 arrange for the prisoner to designate a family member or other
12 outside agent to be notified as to the prisoner's medical condition
13 and prognosis, and as to the recall and resentencing procedures. If
14 the inmate is deemed mentally unfit, the warden or the warden's
15 representative shall contact the inmate's emergency contact and
16 provide the information described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the
24 prisoner or his or her family member or designee may
25 independently request consideration for recall and resentencing by
26 contacting the chief medical officer at the prison or the Director of
27 Corrections. Upon receipt of the request, the chief medical officer
28 and the warden or the warden's representative shall follow the
29 procedure described in paragraph (4). If the director determines
30 that the prisoner satisfies the criteria set forth in paragraph (2), the
31 director or board may recommend to the court that the prisoner's
32 sentence be recalled. The director shall submit a recommendation
33 for release within 30 days in the case of inmates sentenced to
34 determinate terms and, in the case of inmates sentenced to
35 indeterminate terms, the director shall make a recommendation to
36 the Board of Prison Terms with respect to the inmates who have
37 applied under this section. The board shall consider this
38 information and make an independent judgment pursuant to
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by
4 the Director of Corrections or the Board of Prison Terms shall
5 include one or more medical evaluations, a postrelease plan, and
6 findings pursuant to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,
10 the prisoner shall be released by the department within 48 hours
11 of receipt of the court's order, unless a longer time period is agreed
12 to by the inmate. At the time of release, the warden or the warden's
13 representative shall ensure that the prisoner has each of the
14 following in his or her possession: a discharge medical summary,
15 full medical records, state identification, parole medications, and
16 all property belonging to the prisoner. After discharge, any
17 additional records shall be sent to the prisoner's forwarding
18 address.

19 (10) The director shall issue a directive to medical and
20 correctional staff employed by the department that details the
21 guidelines and procedures for initiating a recall and resentencing
22 procedure. The directive shall clearly state that any prisoner who
23 meets the criteria of subparagraph (A) or (C) of paragraph (2) is
24 eligible for recall and resentencing consideration, and that recall
25 and resentencing procedures shall be initiated upon that prognosis.

26 (f) Any sentence imposed under this article shall be subject to
27 the provisions of Sections 3000 and 3057 and any other applicable
28 provisions of law.

29 (g) A sentence to state prison for a determinate term for which
30 only one term is specified, is a sentence to state prison under this
31 section.

32 SEC. 5. (a) Section 2 of this bill incorporates amendments to
33 Section 1170 of the Penal Code proposed by both this bill and AB
34 854. It shall only become operative if (1) both bills are enacted and
35 become effective on or before January 1, 2005, (2) each bill
36 amends Section 1170 of the Penal Code, (3) AB 1941 is not
37 enacted or as enacted does not amend that section, and (4) this bill
38 is enacted after AB 854, in which case Sections 1, 3, and 4 of this
39 bill shall not become operative.

1 (b) Section 3 of this bill incorporates amendments to Section
2 1170 of the Penal Code proposed by both this bill and AB 1941.
3 It shall only become operative if (1) both bills are enacted and
4 become effective on or before January 1, 2005, (2) each bill
5 amends Section 1170 of the Penal Code, (3) AB 854 is not enacted
6 or as enacted does not amend that section, and (4) this bill is
7 enacted after AB 1941, in which case Sections 1, 2, and 4 of this
8 bill shall not become operative.

9 (c) Section 4 of this bill incorporates amendments to Section
10 1170 of the Penal Code proposed by this bill, AB 854, and AB
11 1941. It shall only become operative if (1) all three bills are enacted
12 and become effective on or before January 1, 2005, (2) all three
13 bills amend Section 1170 of the Penal Code, and (3) this bill is
14 enacted after AB 854, and AB 1941, in which case Sections 1, 2,
15 and 3 of this bill shall not become operative.

